

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RUTHANNA SHIRLEY et al.,

CASE NO. 3:23-cv-05077-DGE

Plaintiff,

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT (DKT.
NOS. 67, 87) AND MOTION FOR
EXTENSION OF TIME (DKT. NO.
145)**

WASHINGTON STATE DEPARTMENT
OF FISH AND WILDLIFE et al.,

Defendant.

I INTRODUCTION

This matter comes before the Court on cross motions for summary judgment (Dkt. Nos. 67, 87). For the foregoing reasons, Defendants' motion is GRANTED and Plaintiffs' motion is DENIED. Plaintiffs' motion for extension of time (Dkt. No. 145) is DENIED as moot.

II BACKGROUND

On February 29, 2020, Washington Governor Jay Inslee declared a State of Emergency in Washington in response to the deadly COVID-19 outbreak. (Dkt. No. 68-1 at 2.) He issued Proclamation 20-05, which imposed a “stay-home” order across the state and prohibited social,

1 recreational, and religious gatherings. (*Id.* at 2.) Eighteen months later, Governor Inslee issued
2 Proclamation 21-14 (“the Proclamation”), which required state employees to be fully vaccinated
3 by October 18, 2021, to continue employment with the state. At that point, more than 346
4 million doses of the Food and Drug Administration (“FDA”) approved COVID-19 vaccine had
5 been administered in the United States and the medical community agreed that serious side
6 effects were rare. (*Id.* at 3.) Because “COVID-19 vaccines are effective in reducing infection
7 and serious disease,” the Proclamation concluded that “widespread vaccination is the primary
8 means we have as a state to protect everyone.” (*Id.*) However, the Proclamation carved out an
9 exception to the vaccination requirement for employees who were entitled to disability related
10 accommodations or accommodations related to a sincerely held religious belief under relevant
11 anti-discrimination laws, including Title VII and the Washington Law Against Discrimination
12 (“WLAD”). (*Id.* at 4.) This litigation concerns a number of Plaintiffs who requested religious
13 accommodations from the Washington Department of Fish and Wildlife (“WDFW”) and were
14 subsequently terminated.

15 Plaintiffs filed their amended Complaint on May 28, 2024. (Dkt. No. 26.) The
16 Complaint alleges the following causes of action: (1) violation of the WLAD for perceived
17 physical disability, Wash. Rev. Code § 49.60.180; (2) “Deprivation of Privacy,” violation of
18 Wash. Const. Art. I, Sec. 7; (3) “Deprivation of Life, Liberty, or Property,” violation of U.S.
19 Const. Am. V. Am. XIV, Wash. Const. Art. I, Sec 3; (4) “Violation of the Equal Protection
20 Clause,” Wash. Const. Art. I, Sec. 3; (5) “Deprivation of Religious Freedom,” Wash. Const. Art.
21 I, Sec. 11; (6) Wage Theft; (7) Breach of Contract; (8) Failure to Accommodate under the
22 WLAD; (9) Disparate Impact Discrimination; (10) Free Exercise; and (11) violation of Title VII
23 of the Civil Rights Act, 42 U.S.C. § 2000e-2(a), for Failure to Accommodate Religion. (Dkt.
24

1 No. 26 at 36–53.) The Complaint seeks “[m]oney judgment for back pay and front pay, loss of
 2 benefits, and loss of pension rights”; “double damages for lost wages pursuant to Wash. Rev.
 3 Code § 49.52.070”; “[m]oney judgment for all Plaintiffs pursuant to the infringement upon their
 4 constitutional and statutory rights”; and attorney fees. (*Id.* at 53–54.) The Complaint names the
 5 WDFW and a number of individual defendants—Kelly Susewind, Amy Windrope, Lonnie
 6 Spikes, Steve Bear, and Craig Burley (hereinafter “individual Defendants”). (*See* Dkt. No. 26.)
 7 Finally, although not included in the prayer for relief, the Complaint also appears to include a
 8 request for equitable relief, stating: “The Court should ENJOIN [sic] Defendants from
 9 harassment, retaliation, and disparate treatments against Ms. Shirley, specifically, and other
 10 Plaintiffs not yet to be reinstated generally.” (*Id.* at 53.)

11 Because this litigation involves more than ten plaintiffs, the Parties stipulated, and the
 12 Court ordered, that the Parties could each file two contemporaneous dispositive motions, one
 13 dealing with arguments common to all plaintiffs and one asserting arguments applicable only to
 14 individual plaintiffs. (*See* Dkt. No. 60.) This order takes up the cross motions on the claims that
 15 are applicable to all plaintiffs: all claims except claim 8 and claim 11, which deal with failure to
 16 accommodate religion under the WLAD and Title VII. For factual background on individual
 17 Plaintiff’s claims, see the Court’s summary judgment order on the claims applicable to individual
 18 Plaintiffs. (Dkt. No. 159 at 3–5.)

19 **III LEGAL STANDARD**

20 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
 21 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
 22 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is
 23 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
 24

1 showing on an essential element of a claim in the case on which the nonmoving party has the
 2 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue
 3 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
 4 for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
 5 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some
 6 metaphysical doubt.”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a
 7 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
 8 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*
 9 *Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
 10 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

11 The determination of the existence of a material fact is often a close question. The court
 12 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
 13 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elect.*
 14 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
 15 of the nonmoving party only when the facts specifically attested by that party contradict facts
 16 specifically attested by the moving party. The nonmoving party may not merely state that it will
 17 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
 18 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
 19 Conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts” will not
 20 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888–89 (1990).

21 IV DISCUSSION

22 A. Federal Constitutional Claims

1 Plaintiffs allege violations of the Free Exercise Clause, the Due Process Clause of the
 2 Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth
 3 Amendment. (Dkt. No. 26 at 36–53.)

4 A party that claims federal constitutional violations against the government must bring
 5 suit under 42 U.S.C. § 1983. *See Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705
 6 (9th Cir. 1992). To state a claim under Section 1983, a plaintiff must show: (1) that he or she
 7 suffered a violation of rights protected by the Constitution or created by federal statute; and (2)
 8 that the violation was proximately caused by a person acting under color of state law. *See*
 9 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Defendants argue that “each federal
 10 constitutional claim against WDFW and the officials fails because the agency and the individuals
 11 acting in their official capacities are not ‘persons’ under 42 U.S.C. § 1983, which is the only
 12 vehicle by which a plaintiff may sue state actors for damages based on alleged federal
 13 constitutional violations.” (Dkt. No. 67 at 11) (citing *Will v. Mich. Dep’t of State Police*, 491
 14 U.S. 58, 66 (1989)). Defendants emphasize that “[t]his immunity clearly extends to WDFW.”
 15 (*Id.* at 11) (citing *Lojas v. Washington*, No. CV-07-0140-JLQ, 2008 WL 1837337, at *7 (E.D.
 16 Wash. Apr. 22, 2008), aff’d, 347 F. App’x 288 (9th Cir. 2009) (“Because the State Department
 17 of Fish and Wildlife is a state agency it is entitled to Eleventh Amendment federal court
 18 immunity as is the state of Washington and Ms. Ray-Smith in her official capacity.”)).

19 As this Court has concluded on numerous occasions, to the extent Plaintiffs seek damages
 20 against WDFW and the individual Defendants in their official capacities, those claims are barred
 21 by sovereign immunity. *Mitchell v. Washington*, 818 F.3d 436, 442 (9th Cir. 2016); *c.f. Luxton*
 22 *v. Washington State Dep’t of Veterans Affs.*, No. 3:23-CV-05238-DGE, 2025 WL 896658, *9–10
 23 (W.D. Wash. Mar. 24, 2025); *Strandquist v. Washington State Dep’t of Soc. & Health Servs.*,

1 No. 3:23-CV-05071-TMC, 2024 WL 4645146, *6 (W.D. Wash. Oct. 31, 2024). A state agency
 2 is *not* a person for the purposes of Section 1983 and cannot be sued for constitutional violations
 3 unless it affirmatively waives its sovereign immunity. *Cornel v. Hawaii*, 37 F.4th 527, 531 (9th
 4 Cir. 2022). “State officers in their official capacities, like States themselves, are not amenable to
 5 suit for damages under § 1983.” *Arizonans for Off. Eng. v. Ariz.*, 520 U.S. 43, 69 n.24 (1997).

6 As to their equal protection claim, Plaintiffs advance the novel argument that, as a matter
 7 of law, Title VII abrogates sovereign immunity from suit under the Equal Protection Clause.
 8 (Dkt. No. 129 at 19.) Yet “Congress’ intent to abrogate the States’ immunity from suit must be
 9 obvious from “a clear legislative statement.”” *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 55
 10 (1996) (citing *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 786 (1991)). And the
 11 provision Plaintiffs cite, 42 U.S.C. § 2000e(a), provides no such statement. It provides that
 12 “[f]or the purposes of this subchapter . . . The term ‘person’ includes . . . governments,
 13 governmental agencies, [and] political subdivisions.” 42 U.S.C.A. § 2000e(a). This cannot
 14 abrogate [state’s] sovereign immunity. *See Seminole Tribe*, 517 U.S. at 55. Plaintiffs’ assertion
 15 that “Plaintiffs may properly vindicate their Equal Protection rights—and, to the extent that they
 16 overlap, their Free Exercise rights—against all Defendants under Title VII, not via § 1983 and
 17 without being barred by sovereign immunity,” is unsupported by caselaw and fundamentally
 18 misunderstands the relationship between Title VII and the Fourteenth Amendment. (Dkt. No.
 19 129 at 19.) “The Constitution is not a statute.” *R.R. Ret. Bd. v. Alton R. Co.*, 295 U.S. 330, 346–
 20 47 (1935). The Supreme Court has “never held that the constitutional standard for adjudicating
 21 claims of invidious . . . discrimination is identical to the standards applicable under Title VII.”
 22 *Washington v. Davis*, 426 U.S. 229, 239 (1976).

1 Accordingly, Plaintiff's constitutional claims for damages against WDFW and the
 2 individual Defendants in their official capacity are barred by sovereign immunity.

3 Next, "it is well established that parties seeking injunctive relief against state officers in
 4 their official capacity must bring their suit under *Ex parte Young*, 209 U.S. 123 (1908)."

5 *Strandquist*, 2024 WL 4645146, at *6 (citing *Virginia Off. for Prot. & Advoc. v. Stewart*, 563
 6 U.S. 247, 254 (2011)). An *Ex parte Young* action requires parties to "allege[] an ongoing
 7 violation of federal law and seek[] relief properly characterized as prospective." *Verizon*
 8 *Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002). Plaintiffs request
 9 an injunction against "harassment, retaliation, and disparate treatments," and invoke Title VII.
 10 (Dkt. No. 26 at 53.) Title VII permits the court to order injunctive relief "[i]f the court finds that
 11 the [employer] has intentionally engaged in or is intentionally engaging in an unlawful
 12 employment practice charged in the complaint." 42 U.S.C. § 2000e-5(g)(1). Here, as
 13 Defendants point out, "harassment" and "retaliation" are not "charged in the complaint." (Dkt.
 14 No. 67 at 33.) Furthermore, Defendants emphasize there is no "ongoing" disparate treatment to
 15 enjoin—a claim to which Plaintiffs do not respond. (*See generally* Dkt. No. 129) (*see also* Dkt.
 16 No. 138) ("Plaintiffs offer no evidence or argument in support of their request for injunctive
 17 relief."). Likewise, the Court identifies no ongoing violation of federal law pled. Plaintiffs
 18 therefore do not properly plead a claim for injunctive relief under *Ex Parte Young*.

19 Thus, Defendants' motion for summary judgment on federal constitutional claims against
 20 WDFW and the individual Defendants in their official capacities is GRANTED.

21 Defendants next assert Plaintiffs' constitutional claims against the individual Defendants
 22 in their personal capacities should be dismissed because: 1) Plaintiffs cannot prove sufficient
 23 individual action; 2) the Defendants did not violate a right that was clearly established at the time
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1 of the challenged conduct and are therefore entitled to qualified immunity. (Dkt. No. 138 at 4)
 2 (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). Qualified immunity protects
 3 “government officials . . . from liability for civil damages insofar as their conduct does not
 4 violate clearly established statutory or constitutional rights of which a reasonable person would
 5 have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). It is the plaintiff’s burden to
 6 demonstrate that the defendant “violated a federal statutory or constitutional right” and “the
 7 unlawfulness of their conduct was clearly established at that time.” *Moore v. Garnand*, 83 F.4th
 8 743, 750 (9th Cir. 2023) (internal quotations omitted).

9 A court “may begin the qualified immunity analysis by considering whether there is a
 10 violation of clearly established law without determining whether a constitutional violation
 11 occurred.” *Krainski v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, 616 F.3d
 12 963, 969 (9th Cir. 2010). “To determine whether a constitutional right has been clearly
 13 established for qualified immunity purposes,” the court “must survey the legal landscape and
 14 examine those cases that are most like the instant case.” *Krainski*, 616 F.3d at 970 (quoting
 15 *Trevino v. Gates*, 99 F.3d 911, 917 (9th Cir. 1996)). To show that a right is “clearly
 16 established,” “existing precedent must have placed the statutory or constitutional question
 17 beyond debate.” *al-Kidd*, 563 U.S. at 741. Additionally, the right must have been established
 18 “at the time of the alleged violation.” *Moran v. State of Wash.*, 147 F.3d 839, 844 (9th Cir.
 19 1998). The Supreme Court has cautioned against defining “clearly established right” with
 20 excessive generality. *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014).

21 Thus, the question here is whether the individual Defendants’ alleged misconduct
 22 violated a clearly established constitutional right that a reasonable person in their position would
 23 have known about. Plaintiffs assert that Suswind and Windrope are not protected by qualified
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1 immunity and “concede” the argument as to the other individual Defendants. (Dkt. No. 129 at
 2 17.) As for Windrope and Suswind, Plaintiffs state that “Ms. Windrope was the Department’s¹
 3 lead in creating and implementing its vaccination mandate policy to (as she conceived it) comply
 4 with the Proclamation” and “she personally decided to rescind the original, reasoned,
 5 individualized decision to accommodate Plaintiffs Shirley and Hone, and other exempt
 6 employees.” (*Id.*) “As for Mr. Susewind, as Director, he personally participated in both the
 7 policymaking and the decision to rescind accommodations, along with Ms. Windrope,” Plaintiffs
 8 explain. (*Id.* at 18.) Thus, Plaintiffs propose that Windrope and Susewind “should have
 9 known . . . that discriminatory application of the Proclamation against religious objectors
 10 violated their clearly established right to free exercise of religion.” (Dkt. No. 129 at 19–20.)
 11 Plaintiffs further argue that “these Defendants must have known . . . that setting up a sham
 12 hearing process and ignoring its results when they did not fit the predetermined conclusion,
 13 violated Plaintiffs’ Due Process rights.” (*Id.* at 21.)

14 Yet even if a reasonable jury could find that WDFW failed to offer some or all Plaintiffs
 15 a reasonable accommodation under Title VII of the WLAD, as discussed in this Court’s prior
 16 order (Dkt. No. 159 at 19–30), Plaintiffs fail to establish that Windrope and Susewind’s actions
 17 violated any clearly established free exercise right. At the time of implementation, there was no
 18 Supreme Court or Ninth Circuit precedent that would have put the individual Defendants on
 19 notice that the Proclamation or their chosen method of implementing it could have been
 20 unconstitutional. Furthermore, district courts have consistently found that officials are entitled to
 21 qualified immunity in challenges to public health orders and vaccine mandates passed during the
 22 midst of the global COVID-19 pandemic. *See Strandquist*, 2024 WL 4645146, at *7; *Sinclair v.*
 23 *Blewett*, No. 2:20-CV-1397-CL, 2024 WL 21434, at *4 (D. Or. Jan. 2, 2024); *Northland Baptist*
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1 *Church of St. Paul, Minnesota v. Walz*, 530 F. Supp. 3d 790, 806–807 (D. Minn. 2021), aff'd sub
 2 nom. *Glow In One Mini Golf, LLC v. Walz*, 37 F.4th 1365 (8th Cir. 2022); *New Mexico Elks*
 3 Ass'n v. *Grisham*, 595 F. Supp. 3d 1018, 1027 (D.N.M. 2022); *Benner v. Wolf*, 2021 WL
 4 4123973, at *5 (M.D. Pa. Sept. 9, 2021). Ninth Circuit precedent affirms the reasoning of these
 5 decisions. *See Bacon v. Woodward*, 2024 WL 3041850, at *1 (9th Cir. June 18, 2024)
 6 (upholding facial validity of Proclamation against Free Exercise challenge); *Johnson v. Kotek*,
 7 No. 22-35624, 2024 WL 747022, at *3 (9th Cir. Feb. 23, 2024) (qualified immunity bars
 8 substantive due process claims against Oregon governor for vaccine mandate); *Armstrong v.*
 9 *Newsom*, No. 21-55060, 2021 WL 6101260, at *1 (9th Cir. Dec. 21, 2021) (qualified immunity
 10 bars suits against California governor for his stay-at-home executive order because the order did
 11 not violate clearly established law in March 2020).

12 Plaintiffs cite *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707 (1981) and
 13 Justice Gorsuch's concurrence in *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14 (2020) to
 14 support the existence of a clearly established free exercise right in this context. Yet the facts of
 15 *Thomas* are not analogous to the matter at hand; the case involved the state's denial of
 16 unemployment compensation to an employee who had resigned because of a religious conflict.
 17 *Thomas*, 450 U.S. at 711–712. Because *Thomas* concerned the constitutionality of the denial of
 18 public benefits by states and this case does not involve public benefits, a reasonable official
 19 would not assume that case applies to this fact pattern. *See Peters v. Oregon Health & Sci.*
 20 *Univ.*, No. 3:23-CV-01536-YY, 2024 WL 3402699 (D. Or. June 3, 2024) (concluding the same);
 21 *Gordon v. Cnty. of Orange*, 6 F.4th 961, 969 (9th Cir. 2021) (“Qualified immunity is not meant
 22 to be analyzed in terms of a ‘general constitutional guarantee,’ but rather the application of
 23 general constitutional principles ‘in a particular context.’”). Likewise, dicta from a concurrence
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1 does not clearly establish a constitutional right for the purposes of determining qualified
 2 immunity, assuming arguendo that concurrence is even relevant. A clearly established right is
 3 sufficiently clear if “every reasonable official would have understood that what he is doing
 4 violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015).

5 As for due process, Plaintiffs suggest they were denied a procedural due process right
 6 because they were not provided with a *Loudermill* hearing before termination. (Dkt. No. 129 at
 7 15). *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). However, Plaintiffs do not
 8 identify clearly established law requiring a *Loudermill* hearing for employees that are separated
 9 due to a generally applicable requirement—like a vaccine mandate. In fact, Ninth Circuit
 10 precedent cuts the opposite way. In *Bacon*, the court explained that “[t]he notice provided in the
 11 Proclamation was . . . sufficient” to satisfy procedural due process challenges to “the substantive
 12 rules applied” while implementing the Proclamation, including objections to “what [plaintiffs]
 13 considered to be an overly stringent, ‘sham’ approach to accommodations.” *Bacon*, 2024 WL
 14 3041850, at *2 (citing *Rea v. Matteucci*, 121 F.3d 483, 484–85 (9th Cir. 1997)). An “overly
 15 stringent,” “sham” approach is precisely the issue Plaintiffs raise here. (*See, e.g.*, Dkt. No. 129 at
 16 21) (discussing an “unreasonably stringent COVID-19 vaccination policy,” and a “sham”
 17 process). What is more, this Court has already found that the Proclamation and its exemptions
 18 and accommodations requirements provided the essential requirements of “notice and an
 19 opportunity to respond” required by *Loudermill*. *Pilz v. Inslee*, No. 3:21-cv-05735-BJR, 2022
 20 WL 1719172, at *7 (W.D. Wash. May 27, 2022) (the Proclamation “created a process by which
 21 employees could apply for exemptions and accommodations, and essentially present [their] side
 22 of the story,” which is “all that *Loudermill* requires.”) *aff’d*, No. 22-35508, 2023 WL 8866565
 23 (9th Cir. Dec. 22, 2023).

1 Accordingly, the individual Defendants are entitled to qualified immunity on Plaintiffs'
 2 constitutional claims. The motion for summary judgment on federal constitutional claims is
 3 therefore GRANTED.

4 **B. State Constitutional Claims**

5 Defendants argue Plaintiffs' state constitutional claims are barred because there is no
 6 private right of action for damages under the Washington State Constitution. Indeed,
 7 "Washington law contains no counterpart to 42 U.S.C. § 1983," and Washington courts have
 8 denied attempts to create a cause of action for damages under the Washington Constitution
 9 without guidance from the legislature. *Lubers v. Hinson*, No. 2:23-CV-01396-JHC, 2024 WL
 10 810552, at *2 (W.D. Wash. Feb. 27, 2024) (citing *Blinka v. Washington State Bar Ass'n*, 109
 11 Wn. App. 575, 591, 36 P.3d 1094 (2001)); *Dunn v. City of Seattle*, 420 F. Supp. 3d 1148, 1156
 12 (W.D. Wash. 2019). Thus, Plaintiffs "concede that Washington law does not provide a private
 13 right of action for violation of the State Constitution in general, and specifically as to its free-
 14 exercise and equal protection clauses." (Dkt. No. 129 at 23–24.)

15 However, Plaintiffs argue that "the State Constitutional substantive due process right to
 16 privacy, specifically bodily autonomy, is another story entirely." (*Id.* at 24) (citing Wash. Const.
 17 Art. 1, § 7). Plaintiffs argue that the Washington Constitution protects "the right to autonomous
 18 decision-making," which includes "the right to refuse medical treatment" and that there is a
 19 cause of action for money damages for such claims. (*Id.*) (citing *Butler v. Kato*, 154 P.3d 259,
 20 264 (Wash. Ct. App. 2007); *In re Colyer*, 660 P.3d 738, 742 (Wash. Ct. App. 1983); *Robinson v.*
 21 *City of Seattle*, 10 P.3d 452, 460 (2000); *Wash. Pub. Emp. Ass'n v. Wash. State Ctr. for*
 22 *Childhood Deafness & Hearing Loss*, 450 P.3d 601, 611 (Wash. 2019)). None of the cases put

1 forward by Plaintiffs involve a claim for money damages, however. Moreover, in *Reid v. Pierce*
 2 *Cnty.*, the Washington Supreme Court explicitly *declined* to create such a cause of action:

3 Plaintiffs assert the County violated their right of privacy under article I, section 7 of the
 4 Washington Constitution and, as such, they should be allowed to bring a civil action for
 5 damages against the County. Plaintiffs concede no such action under the state
 6 constitution is currently recognized but ask us to use this case to create one. . . . We
 7 decline[.] . . . We feel, at this time, that Plaintiffs may obtain adequate relief under the
 8 common law and that such actions are better addressed under the common law invasion
 9 of privacy action. Plaintiffs have not presented a reasoned or principled basis upon which
 10 to construct a constitutional cause of action, nor have they established why a
 11 constitutional cause of action is more appropriate than the common law cause of action
 12 which already exists. Because we hold Plaintiffs are entitled to maintain an action for
 13 invasion of privacy under the common law, we decline to reach this issue in this case.

14 Subsequently, Washington courts—and courts in this district—have affirmed that a cause of
 15 action for money damages under the constitutional right to privacy does *not* exist. *See Keyes v.*
Blessing, No. 25982-0-III, 2008 WL 2546439, at *1 n.1 (Wash. Ct. App. 2008) (“[T]here is no
 16 private right of action under [Article I, Section 7] of the state constitution.”); *Shavlik v.*
Snohomish Cnty. Superior Ct., No. C18-1094JLR, 2018 WL 6724764 (W.D. Wash. Dec. 21,
 17 2018) (“The Washington Supreme Court has declined to recognize a private right of action under
 18 that provision of the Washington Constitution.”).

19 Accordingly, Defendant’s motion for summary judgment on all Washington
 20 Constitutional claims is GRANTED.

21 **C. WLAD Perceived Disability Claim**

22 To state a disability discrimination claim under the WLAD, a plaintiff must show (1) he
 23 was perceived to have a disability; (2) he was able to perform the essential functions of the job;
 24 and (3) the perception of his disability was a substantial factor in the employer’s decision to deny
 25 employment. *Taylor v. Burlington N. R.R. Holdings Inc.*, 801 F. App’x 477, 478 (9th Cir. 2020).
 26 “Although the WLAD offers protections at least as broad as those offered under the [Americans
 27

1 with Disabilities Act], Washington courts look to federal case law interpreting remedial statutes
 2 like the ADA and Title VII to guide interpretation of the WLAD.” *Poe v. Waste Connections*
 3 *US, Inc.*, 371 F. Supp. 3d 901, 909 (W.D. Wash. 2019) (quoting *Taylor v. Burlington N. R.R.*
 4 *Holdings Inc.*, 904 F.3d 846, 848–49 (9th Cir. 2018)).

5 In their Complaint, Plaintiffs suggest that “Defendants acted believing Plaintiffs have a
 6 perceived physical disability of not having the best protection against COVID-19 in their bodies
 7 that conflicted with a stated job requirement defined by Defendants’ vaccine mandate.” (Dkt.
 8 No. 26 at 38.) Defendants argue that refusal to comply with a generally applicable vaccine
 9 requirement is not a perceived disability. (Dkt. No. 67 at 27.) In their response, Plaintiffs do not
 10 defend the perceived disability claim. (*See generally* Dkt. No. 129.) As another court in this
 11 district recently put it, “no reasonable jury would find that a general policy requiring all
 12 employees be vaccinated singles out [plaintiffs] for a ‘perceived disability.’” *Strandquist*, 2024
 13 WL 4645146, at *13. This Court concurs. District courts have consistently rejected this
 14 argument since the inception of similar lawsuits in 2020. *See id.; see also Kerkering v. Nike,*
 15 *Inc.*, No. 3:22-CV-01790-YY, 2023 WL 5018003, at *2 (D. Or. May 30, 2023) (“Courts have
 16 invariably rejected the theory that an individual’s decision to forgo a vaccination constitutes a
 17 disability under the ADA.”); *Gallo v. Washington Nationals Baseball Club, LLC*, No. 22-CV-
 18 01092 (APM), 2023 WL 2455678, at *4 (D.D.C. Mar. 10, 2023) (“Plaintiff thus has failed to
 19 state a ‘regarded as’ disabled claim because he has not alleged that Defendant perceived him to
 20 have a disability at the time of his termination. Every court that has considered this question has
 21 held the same.”).

22 Accordingly, Plaintiffs’ WLAD “perceived disability” claim is DISMISSED on summary
 23 judgment.

1 **D. WLAD Disparate Impact Claim**

2 To state a disparate impact claim under the WLAD, “the plaintiff must prove (1) there is
 3 a facially neutral policy or practice and (2) the policy falls more harshly on a protected class.”

4 *State v. City of Sunnyside*, 550 P.3d 31, 50 (Wash. 2024) (internal citation omitted). “The
 5 elements of a prima facie disparate impact claim under state and federal law are similar[.]” *Id.*
 6 Plaintiffs propose the protected class of “religious employees” and specifically those who had “a
 7 religious practice of avoiding COVID-19 vaccination.” (Dkt. No. 129 at 22.) They argue that
 8 “the Department’s zero-contract policy disproportionately impacted religious employees in
 9 particular,” and particularly a “distinctive group of Christians” who oppose vaccination. (*Id.*)

10 “Courts generally treat disparate impact claims as those affecting particular groups or
 11 faiths, including articulable subgroups, but not all those who share a single common belief.”

12 *Dunbar v. Walt Disney Co.*, No. CV 22-1075-DMG (JCX), 2022 WL 18357775, at *3 (C.D. Cal.
 13 July 25, 2022). This is because “[i]f a plaintiff could narrowly define its class based on its
 14 particular religious belief, rather than the broader religious faith or group to which it belongs,
 15 then disparate-impact claims would have a nearly limitless reach[,] . . . [and] any policy
 16 impacting a plaintiff’s specific religious belief would generally impact 100% of the members of
 17 a class defined by that belief, which would virtually always amount to a disproportionate impact
 18 as compared to those falling outside the class.” *Id.* (citing *Coral Ridge Ministries Media, Inc. v.*
 19 *Amazon.com, Inc.*, 406 F. Supp. 3d 1258, 1306 (M.D. Ala. 2019), *aff’d*, 6 F.4th 1247 (11th Cir.
 20 2021) (citation omitted)). Considering a similar circumstance, a court in this district similarly
 21 concluded that if plaintiffs could define a class based on religious interpretation, “any imposition
 22 on an individual’s professed religious beliefs would constitute a 100% impact rate and prove
 23 disparate impact.” *Akiyama v. U.S. Judo Inc.*, 181 F. Supp. 2d 1179, 1186 (W.D. Wash. 2002);
 24

1 see also *Cox v. Nw. Reg'l Educ. Serv. Dist.*, No. 3:22-CV-01073-HZ, 2024 WL 777598, 13–14
 2 (D. Or. Feb. 23, 2024) (coming to the same conclusion when considering religious objections to
 3 a COVID-19 vaccine mandate); *Strandquist*, 2024 WL 4645146, at *14. This Court agrees and
 4 adopts the reasoning of *Dunbar*, *Akiyama*, *Cox*, and *Strandquist*.

5 Here, as in *Strandquist*, “the relevant comparison for a disparate impact claim is between
 6 those who objected to vaccination under the mandate based on secular beliefs as opposed to
 7 religious beliefs. Once that comparison is made, it is obvious that [Plaintiffs’] disparate impact
 8 claim fails. Those who objected to vaccination based on secular beliefs were not eligible for
 9 accommodation at all—they simply had to get vaccinated or lose their jobs. Religious objectors,
 10 on the other hand, were entitled to a process for seeking exemptions. The Proclamation fell less
 11 harshly on those who objected to vaccination for religious reasons, not more.” *Strandquist*, 2024
 12 WL 4645146, at *14.

13 Accordingly, Plaintiffs’ WLAD disparate impact claim is DISMISSED on summary
 14 judgment.

15 **E. Wage Theft Claim**

16 Defendants argue that the Court should grant summary judgment on Plaintiffs’ wage theft
 17 claim because “it is premised on WDFW’s nonpayment of wages after Plaintiffs’ separations”
 18 and “WDFW was not obligated to pay Plaintiffs’ salaries following their separations.” (Dkt. No.
 19 67 at 2.) Plaintiffs do not put forth evidence or argument in support of their wage theft claim.
 20 (See generally Dkt. No. 129.) Because they do not rebut Defendant’s arguments, Plaintiffs
 21 concede they have merit and the Court deems them abandoned. *See Shakus v. Schiro*, 514 F.3d
 22 878, 892 (9th Cir. 2008). Moreover, the claim fails as a matter of law because Plaintiffs do not
 23 allege that WDFW failed to pay wages owed at the end of the established pay period. *See Wash.*
 24

1 Rev. Code. § 49.48.010 (“[w]hen any employee shall cease to work for an employer, whether by
 2 discharge or by voluntary withdrawal, the wages due him or her on account of his or her
 3 employment shall be paid to him or her at the end of the established pay period It shall be
 4 unlawful for any employer to withhold or divert any portion of an employee’s wages unless the
 5 deduction is” required by law, agreed to by employer and employee, or for medical services.”).

6 For these reasons, Plaintiffs’ wage theft claim is DISMISSED on summary judgment.

7 **F. Breach of Contract Claim**

8 Defendants argue that Plaintiffs’ contract claim is improperly plead and has no
 9 evidentiary basis because Plaintiffs “have not provided the Court with, or described the terms of,
 10 the contracts that were allegedly violated.” (Dkt. No. 138 at 13.) This is fatal to their claim,
 11 Defendants argue, because “[t]o prove breach of contract, each plaintiff must prove the existence
 12 of a contract, its breach, and resulting damages,” and Plaintiffs do not “even allege a contract or
 13 term they claim is applicable[.]” (*Id.* at 14.)

14 Under Washington Law, an employment contract indefinite as to duration is terminable at
 15 will by either the employee or the employer. *Thompson v. St. Regis Paper Co.*, 686 P.2d 1081,
 16 1089 (Wash. 1984). Plaintiffs have provided no *evidence* showing the alleged contract(s) at
 17 issue was not indefinite as to duration and therefore terminable by will. (*See generally* Dkt. No.
 18 129, Dkt. No. 87.)

19 Because Plaintiffs have not provided the Court with any evidence or argument in support
 20 of Plaintiffs’ breach of contract claim, it is DISMISSED on summary judgment.

21 **G. Plaintiffs’ Summary Judgment Motion**

22 Because the Court is granting Defendants’ motion for summary judgment in full, the
 23 majority of Plaintiffs’ motion is moot. However, Plaintiffs advance one argument that the Court
 24

sees fit to address: Plaintiffs argue that the arbitral awards from the Shirley and Hone arbitrations should have an issue preclusive effect on the claims of the *other* Plaintiffs in this litigation. (Dkt. No. 87 at 18–19.) The Court cannot conceive of how Plaintiffs could be precluded from establishing facts relevant to their case by a prior proceeding in which they were *not* a party or otherwise represented and did not involve their individual claims. *C.f. Bell v. CSX Transportation, Inc.*, 733 F. Supp. 3d 385, 396 (D. Md. 2024). Moreover, this Court has already held that the arbitral awards of Shirley and Hone do not have preclusive effect on any of Shirley’s and Hones’ claims in this litigation. (Dkt. No. 159 at 8–17.) They also do not have a preclusive effect on the claims of *other* Plaintiffs.

V CONCLUSION

Accordingly, Defendants' motion (Dkt. No. 67) is GRANTED. Plaintiffs' first, second, third, fourth, fifth, sixth, seventh, ninth, and tenth claims are DIMISSED on summary judgment. Plaintiffs' motion (Dkt. No. 87) is DENIED. Plaintiffs' motion for extension of time (Dkt. No. 145) is DENIED as moot.

Dated this 9th day of May, 2025.



David G. Estudillo
United States District Judge